

AMENDED IN SENATE MAY 30, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

**Senate Joint Resolution**

**No. 2**

**Introduced by Senator Morrow**

May 17, 2001

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Senate Joint Resolution No. 2—Relative to electricity pricing.

LEGISLATIVE COUNSEL'S DIGEST

SJR 2, as amended, Morrow. Electricity pricing.

This measure would memorialize the members of the Federal Energy Regulatory Commission to, using confidential information, *work with the United States Department of Justice and the Federal Trade Commission to* provide refined benchmark cost estimates to obtain more precise measures of the appropriate competitive price level of electricity, obtain better measures of potential capacity withholding behavior of generators, determine the role of marketers in the production and bidding behavior of the California generators, ~~and~~ examine the behavior of generators located outside the California Independent System Operator, as specified, *and impose, until March 1, 2003, wholesale energy rates that are just and reasonable load-differentiated demand rates or cost-of-service based rates for electricity generated by an electric facility that was in service prior to June 1, 2001, on sales of electric energy at wholesale prices in the western energy market.* The measure would further memorialize the Congress of the United States to hold committee hearings and engage in all other necessary oversight activities to ensure that the Federal Energy Regulatory Commission completes these determinations, *activities*, and estimates in as timely a manner as possible ~~and~~, to review

the confidential industry data, ~~as specified~~ *and to require the Federal Energy Regulatory Commission to comply with a specified provision of the Federal Power Act.*

Fiscal committee: no.

1 WHEREAS, It is clear that the electrical power crisis in  
2 California and the Western Regional Coordinating Council area  
3 (WRCC) is primarily a supply-side deficiency, created in large  
4 part by California's failure to expand and upgrade its electricity  
5 generation and transmission infrastructure during the past decade;  
6 and

7 WHEREAS, While it is logical that the inadequate supply of  
8 electricity, especially during peak periods, would drive wholesale  
9 market prices higher, ~~many observers allege~~ *regulatory*  
10 *authorities have found* that the extraordinarily high actual prices  
11 of the past year are too high to be explained by standard market  
12 fundamentals in a workably competitive market; and

13 WHEREAS, Analytical studies of wholesale electricity market  
14 performance during the past year in California; reviewed both the  
15 competitive benchmark prices, including all major market  
16 fundamentals, and potential capacity withholding; and several of  
17 these studies, including one conducted by the California  
18 Independent System Operator (ISO), conclude all of the  
19 following:

20 (a) The markets were not workably competitive.

21 (b) The high wholesale electricity prices cannot be explained  
22 as the natural outcome of "market ~~fundamentals~~,"  
23 *fundamentals*," such as rising natural gas prices, increased loads  
24 in California, reduction of supplies available for import into  
25 California due to higher loads elsewhere in the Western States  
26 Coordinating Council (WSCC), *the cost of environmental*  
27 *compliance*, or poor hydroelectric conditions in the Northwest, in  
28 competitive markets since there is a very significant gap between  
29 actual market prices and competitive benchmark prices that take  
30 account of these market fundamentals.

31 (c) There is empirical evidence, not yet adequately explained  
32 ~~away~~, to support a presumption that the high prices experienced  
33 were the product of deliberate actions on the part of generators or  
34 marketers controlling the dispatch of generating capacity to  
35 withhold supply and increase market prices; and

WHEREAS, While analyses of possible capacity withholding behavior have been constrained by the limited availability of data, there is sufficient empirical evidence to warrant further investigation of supply and bidding behavior by generators and marketers operating in the California market; and

WHEREAS, Inasmuch as the Federal Energy Regulatory Commission (FERC) has determined that wholesale prices have ~~been unfair, but refused to take corrective regulatory action, not~~ *been just and reasonable, but has not taken meaningful corrective regulatory action to address high wholesale electric prices,* leading to numerous allegations that the FERC has failed to discharge its responsibilities mandated by the Federal Power Act (16 U.S.C. Sec. 791a et seq.) to ensure a competitive wholesale electricity market, and these allegations have tainted the FERC's reputation; and now, therefore, be it

*Resolved, by the Senate and Assembly of the State of California, jointly,* That further study is required to support the efforts of state, regional, and federal policy makers to design appropriate remedies to the market failures identified in the studies; and be it further

*Resolved,* That further study is required to help determine whether the FERC properly discharged its duties; and be it further

*Resolved, Full That full* study requires access to confidential data held only by FERC; and be it further

*Resolved,* That the Legislature respectfully memorializes that FERC to do all of the following:

(a) With the use of confidential data, *work with the United States Department of Justice and the Federal Trade Commission* to provide refined benchmark cost estimates to obtain more precise measures of the appropriate competitive price level.

(b) With the use of confidential data, obtain better measures of potential capacity withholding behavior of generators, and determine the role of marketers in the production and bidding behavior of the California generators.

(c) Examine the behavior of generators located outside the California ISO to determine exactly why importers declined as much as they did.

(d) Conduct formal hearings on the issue of illegal pricing and capacity withholding.

(e) Extend the 60-day refund deadlines pending the findings of these examinations and hearings.

(f) (1) Commencing 60 days from the date of enactment of this measure, and until March 1, 2003, impose wholesale energy rates that are just and reasonable load-differentiated demand rates or cost-of-service based rates for electricity generated by an electric facility that was in service prior to June 1, 2001, on sales of electric energy at wholesale prices in the western energy market.

(2) “Load-differentiated demand rates” or “cost-of-service based rates” means a rate charge or classification for the sale of electric energy that is equal to all of the following:

(A) All the variable costs of producing the electric energy.

(B) All the fixed costs of producing the electric energy.

(C) A reasonable risk premium or return on invested capital.

(D) All other reasonable costs associated with the production, acquisition, conservation, and transmission of electric power; and be it further

Resolved, That the Legislature respectfully memorializes the Congress of the United States to do all of the following:

(a) Hold committee hearings and engage in all other necessary oversight activities to ensure that the FERC completes the above described determinations, activities, and estimates in as timely a manner as possible.

(b) Hold committee hearings and engage in all other necessary oversight activities, including reviewing the above described confidential industry data to determine whether the FERC has met its mandate, ~~under~~ under Section 206 of the Federal Power Act, to ensure the existence of a competitive wholesale electric market.

(c) Ensure that the FERC has both the necessary accountability to the Congress and resources ~~to accomplish all the above; and be it further,~~ including those of the United States Department of Justice and the Federal Trade Commission, to accomplish all of the above.

(d) Require the FERC to enforce the fair pricing laws under Section 206 of the Federal Power Act to ensure that rates are just and reasonable; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, The Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the

- 1 United States, and to each member of the Federal Energy
- 2 Regulatory Commission.

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